

# STOKES & BARTHOLOMEW

A PROFESSIONAL ASSOCIATION

SUNTRUST CENTER

424 CHURCH STREET

SUITE 2800

NASHVILLE, TENNESSEE 37219-2388

TELEPHONE (615) 259-1450

TELECOPIER (615) 259-1470

E-MAIL [stokebarth@stokebarth.com](mailto:stokebarth@stokebarth.com)

REC'D TN  
REGULATORY AUTH.

99 FEB 12 AM 11 56

OFFICE OF THE  
EXECUTIVE SECRETARY

SAMUEL W. BARTHOLOMEW, JR.  
OGDEN STOKES  
WILLIAM R. BRUCE  
LARRY STEWART  
D. REED HOUK  
ROBERT R. CAMPBELL, JR.  
CYNTHIA MITCHELL BARNETT  
PAUL S. DAVIDSON  
DOUGLAS J. BROWN  
D. KIRK SHAFFER  
WILLIAM H. WEST  
CARTER R. TODD  
DAVID T. AXFORD  
WILLIAM H. NEELY  
REBER M. BOULT  
JOSHUA F. AYLOR  
GRANT C. GLASSFORD  
JAMES H. DRESCHER  
ELIZABETH ENOCH MOORE  
DARLENE T. MARSH

DANIEL P. SMITH  
KIM HARVEY LOONEY  
GUILFORD F. THORNTON, JR.  
CHARLES W. COOK III  
FRED RUSSELL HARWELL  
MARTIN S. BROWN, JR.  
KEVIN H. SHARP  
\*ANDREW L. SCHWARCZ  
ALBERT J. BART  
KATE C. MCKEE  
WILLIAM C. BREWER III  
JOEL T. GALANTER  
BRANDON L. HAYES  
CHRISTINE J. LAIRD

OF COUNSEL  
JOHN L. CHAMBERS  
LEW CONNER  
RUTH M. KINNARD  
VADEN LACKEY, JR.

\*LICENSED IN LOUISIANA ONLY

February 12, 1999

Mr. David Waddell  
Executive Secretary  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37243

RE: Application of BellSouth Long Distance, Inc. for a CCN to Provide Operator Services and Resell Interexchange Telecommunications Services in Tennessee.

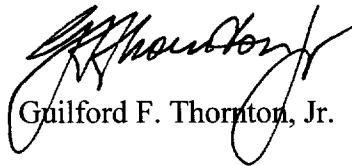
Docket No. 97-01404

Dear Mr. Waddell:

I am enclosing with this letter a proposed order reflecting the action taken by the Authority on the above referenced application. I have included a diskette for the agency's convenience. Copies have been served on counsel for the parties of record.

Should you have any questions or require anything further at this time, please do not hesitate to contact me.

Sincerely,



Guilford F. Thornton, Jr.

GFT/lb

Enclosure

cc: James G. Harralson, Esq.

**BEFORE THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE**

**IN RE: APPLICATION OF BELL SOUTH LONG DISTANCE, INC. FOR A  
CERTIFICATE OF CONVENIENCE AND NECESSITY TO PROVIDE  
OPERATOR SERVICES AND RESELL INTEREXCHANGE  
TELECOMMUNICATIONS SERVICES IN TENNESSEE**

**DOCKET: 97-01404**

---

**TRA ORDER GRANTING IN PART AND DENYING IN PART APPLICATION FOR  
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY**

---

This matter is before the Tennessee Regulatory Authority (the "Authority") on the application of BellSouth Long Distance Inc. ("BSLD") for a Certificate of Public Convenience and Necessity ("the Application"). The Authority has unanimously determined that the Application should be granted in part and denied in part.

**I. Travel of the Case.** On August 1, 1997, BSLD filed its application pursuant to TCA § 65-4-201 for authority to operate in Tennessee as a reseller of long distance services. AT&T Telecommunications of the South Central States, Inc. ("AT&T"), NEXTLINK Tennessee, LLC ("NEXTLINK") MCI Telecommunications Corporation ("MCI"), Time Warner Communications of the Mid-South, LP ("Time Warner"), the Communications Workers of America, AFL-CIO ("CWA") and TCG Mid South, Inc. ("TCG") all filed petitions to intervene and were subsequently granted intervention in this contested case proceeding.

At its regularly scheduled Authority conference on September 9, 1997, the Directors appointed then-Director Melvin Malone to serve as Hearing Officer in this matter. A prehearing conference was held on Thursday, September 18, 1997. At the prehearing conference, BSLD waived the sixty (60) day period within which the Authority is required to render a decision under TCA § 65-4-201. On October 1, 1997, the Hearing Officer issued his Report and Recommendation which set forth a procedural schedule for discovery requests and briefing purposes. BSLD filed prefiled direct testimony by James G. Harralson on November 18, 1997. No other testimony was filed. The

Authority held a public hearing on the merits on April 28, 1998. The Authority deliberated over this matter at a special Director's conference on December 8, 1998.

**II. Arguments of the Parties.** BSLD seeks authority to provide in Tennessee the few long distance services not precluded at this time by Section 271 of the Federal Telecommunications Act of 1996 (the "Federal Act"). Specifically, BSLD seeks certification to provide the incidental interLATA long distance services set forth in Section 271(g) of the Act. Secondly, BSLD seeks authority to provide resold intraLATA toll services. Thirdly, BSLD seeks authority to provide the full array of interLATA services at such time as the Federal Communications Commission ("FCC") approves BellSouth's Section 271 application, once such an application is filed.

The intervenors generally argue that BSLD's application is premature. They maintain that BellSouth first must receive approval from the FCC on its Section 271 application before BSLD may apply to the TRA for a certificate. NEXTLINK, Time Warner and MCI argue that the TRA is limited to granting a certificate for service that BSLD is presently allowed to provide under federal law, namely incidental interLATA services enumerate in Section 271(g) of the Federal Act. AT&T argues alone that BSLD should not be allow to provide intraLATA services until BellSouth Telecommunications, Inc. ("BST") has an approved toll dialing parity plan in place.<sup>1</sup> Finally, the intervenors argue that the TRA has no authority to issue a contingent certificate which on its face would authorize BSLD to provide services that federal law currently prohibits.

BSLD asserts that there is nothing in the Federal Act nor in state statute that prohibits state certification before FCC approval. The intervenors argue that the Authority does not have the ability to grant this authorization before BellSouth secures Section 271 relief from the FCC. To do so would constitute a conditional certificate, which is not provided for in state statute or TRA rules. BSLD responds that the intervenors could just as easily claim that BSLD must secure authority from the *state commissions* before seeking relief from the FCC, thereby placing BSLD in a catch 22. BSLD notes that each of the other eight states in BellSouth's nine-state region have granted the authority BSLD is seeking in Tennessee.

---

<sup>1</sup> On February 8, 1999, the Authority approved an intraLATA toll dialing parity plan filed by BST in Docket No. 97-01399. This plan was agreed to by AT&T, among others.

### **III. Finding of Fact and Conclusions of Law.**

A. No party challenges BSLD's managerial, financial and technical abilities to provide the applied for services. Accordingly, based on our review of BSLD's application and the entire record in this matter, the Authority finds that BSLD satisfies the managerial, financial and technical requirements contained in TCA 65-4-201(c). Further, pursuant to the additional requirements of TCA 65-4-201(c), the Authority finds that BSLD has demonstrated its willingness generally to adhere to all applicable policies, rules and orders.

B. The Authority finds that Section 271(g) of the Federal Act specifically authorizes a "Bell operating company or its affiliate" to provide certain incidental interLATA services prior to BellSouth securing general relief from the FCC under Section 271. Specifically, Section 271(g) provides as follows in its entirety:

DEFINITION OF INCIDENTAL INTERLATA SERVICES. ---For purposes of this section, the term "incidental interLATA services" means the interLATA provision by a Bell operating company or its affiliate--

(1)(A) of audio programming, video programming, or other programming services to subscribers to such services of such company or affiliate;

(B) of the capability for interaction by such subscribers to select or respond to such audio programming, video programming, or other programming services;

(C) to distributors of audio programming or video programming that such company or affiliate owns or controls, or is licensed by the copyright owner of such programming (or by an assignee of such owner) to distribute; or

(D) of alarm monitoring services;

(2) of two-way interactive video services or Internet services over dedicated facilities to or for elementary and secondary schools as defined in section 254(h)(5);

(3) of commercial mobile services in accordance with section 332(c) of the Act and with the regulations prescribed by the Commission pursuant to paragraph (8) of such section;

(4) of a service that permits a customer that is located in one LATA to retrieve stored information from, or file information for storage in, information storage facilities of such company that are located in another LATA;

(5) of signaling information used in connection with the provision of telephone exchange services or exchange access by a local exchange carrier; or

(6) of network control signaling information to, and receipt of such signaling information from, common carriers offering interLATA services at any location within the area in which such Bell operating company provides telephone exchange services or exchange access.

C. The Authority finds that the Federal Act does not preclude the Authority from certificating BSLD to provide intraLATA toll services on a resold basis.

D. The Authority finds that approval at this time of BSLD's application regarding the interLATA services other than those incidental services identified in Section 271(g) of the Federal Act would amount to a contingent certificate, the contingency being approval by the FCC of BellSouth's Section 271 application. BSLD offers no statutory or case law support for the Authority's granting of a contingent certificate. While the TRA has approved certificates for applicants that were dependent upon future construction or purchase of equipment to offer services, none were legally prohibited from offering the services as is BSLD. Accordingly the Directors conclude that it is not in our power to grant BSLD authority at this time for services that might be allowed in the future at such time as the FCC grants BellSouth relief under Section 271 of the Federal Act..

**IT IS THEREFORE ORDERED:**

1. BSLD's application for a certificate of public convenience and necessity pursuant to T.C.A. § 65-4-201 is hereby granted so far as it concerns the provision of: (a) incidental interLATA services as defined in Section 271(g) of the Federal Act; and (b) resold intraLATA toll services.

2. BSLD's application is denied at this time with respect to its request for authority to provide in-region interLATA services other than those services identified in Section 271(g) of the Federal Act;

3. Any party aggrieved by the Authority's decision in this matter may file a petition for reconsideration with the Authority within ten (10) days from the date of this Order.

4. Any party aggrieved by the Authority's decision in this matter has the right of judicial review by filing a Petition for Review in the Tennessee Court of Appeals, Middle Section with sixty

(60) days from the date of this Order.

---

CHAIRMAN

---

DIRECTOR

---

DIRECTOR

ATTEST:

---

EXECUTIVE DIRECTOR

## CERTIFICATE OF SERVICE

I, Guilford F. Thornton, Jr., hereby certify that I have served a copy of the preceding on the individuals listed below on this the 12th day of February, 1999.

Val Sanford  
Gullett, Sanford, Robinson & Martin PLLC  
230 4<sup>th</sup> Avenue North, 3<sup>rd</sup> Floor  
Nashville, TN 37219

Jon E. Hastings  
Boult, Cummings, Conners & Berry  
414 Union Street, Suite 1600  
Nashville, TN 37219

James Lamoureux  
AT&T  
1200 Peachtree St., N.E.  
Atlanta, GA 30309

D. Billye Sanders  
Waller, Lansden, Dortch & Davis  
511 Union Street  
Nashville, TN 37219-1750

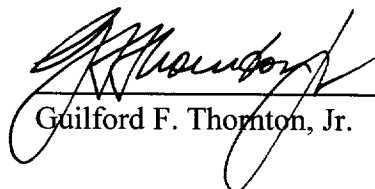
Donald Scholes  
Branstetter, Kilgore  
227 Second Avenue, N.  
Nashville, TN 37219

Dana Shaffer  
NEXTLINK  
105 Molloy Street, #300  
Nashville, TN 37201

Henry Walker  
Boult, Cummings, Conners & Berry  
P.O. Box 198062  
Nashville, TN 37219-8062

Charles B Welch, Jr.  
Farris, Mathews  
511 Union Street  
Nashville, TN 37219

Richard Collier  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37243



---

Guilford F. Thornton, Jr.